Motiva LLC v. Nintendo Co Ltd et al Doc. 1

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

MOTIVA, LLC	§	
	§	
Plaintiff,	§	
	§	Civil Action No. 6:08-cv-429
v.	§	
	§	JURY TRIAL DEMANDED
NINTENDO CO. LTD. and	§	
NINTENDO OF AMERICA, INC.	§	
	§	
Defendants.	§	

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Motiva, LLC ("Motiva") for its Complaint against Defendants Nintendo of America, Inc. ("Nintendo America") and Nintendo Co. Ltd. ("Nintendo Japan") alleges as follows:

THE PARTIES

1. Plaintiff Motiva, LLC is a limited liability company duly organized and existing under the laws of Ohio, having its principal place of business at 8156 Campden Lakes Blvd., Dublin, Ohio, 43016.

2. On information and belief, Defendant Nintendo Japan is a Japanese corporation with its principal place of business at 11-1 Kamitoba hokotate-cho, Minami-ku, Kyoto 601-8501, Japan.

3. On information and belief, Defendant Nintendo America is a corporation duly organized and existing under the laws of the State of Washington, having its principal place of business at 4820 150th Avenue N.E., Redmond, Washington, 98052.

4. On information and belief, Defendant Nintendo America is a wholly-owned subsidiary of Nintendo Japan.

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JURISDICTION AND VENUE

5. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has jurisdiction over Plaintiff's federal law claims under 28 U.S.C. §§ 1331 and 1338(a).

6. This Court has personal jurisdiction over Defendants because they have committed acts giving rise to this action within Texas and within this judicial district and has established minimum contacts within the forum such that the exercise of jurisdiction over Defendants would not offend traditional notions of fair play and substantial justice.

7. Defendant Nintendo America is authorized to do business in Texas and maintains an agent for service of process, CT Corporation System, at 350 N. St. Paul Street, Dallas, Texas, 75201.

8. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b)-(c) and 1400(b) because Defendants have committed acts within this judicial district giving rise to this action, and Defendants reside in and have and continue to conduct business in this District, including one or more acts of offering for sale, selling, using, importing and/or offering for sale infringing products or providing service and support to Defendant's customers in this District.

CLAIMS

INFRINGEMENT OF U.S. PATENT 7,292,151

9. Motiva re-alleges and incorporates by reference the allegations set forth in Paragraphs 1-7 above as if fully set forth herein.

10. On November 6, 2007, United States Patent Number 7,292,151 ("the '151 patent") entitled "Human Movement Measurement System" was duly and lawfully issued by the United States Patent and Trademark Office. A true and correct copy of the '151 patent is attached hereto as Exhibit A.

11. Motiva is the owner of the '151 patent and has the right to enforce that patent with respect to Defendants.

12. Defendants have infringed and are infringing the ‘151 patent by making, using, importing, offering for sale and/or selling in the United States products and/or services, including video game systems, that embody the inventions claimed in the ‘151 patent and, upon information and belief, by actively inducing and/or contributing to the infringement of the ‘151 patent by others. Defendant is liable for infringement of the ‘151 patent pursuant to 35 U.S.C. § 271.

13. Upon information and belief, Defendants’ infringement of the ‘151 patent is willful and thus entitles Motiva to increased damages under 35 U.S.C. § 284 and to attorneys’ fees and costs incurred in litigating this action under 35 U.S.C. § 285.

14. Upon information and belief, Defendants will continue to directly infringe, induce infringement and/or contribute to the infringement of the ‘151 patent unless enjoined by this Court.

15. Defendants’ acts of infringement have damaged Motiva in an amount to be proven at trial, but in no event less than a reasonable royalty. Defendants’ infringement of Motiva’s rights under the ‘151 patent will continue to damage Motiva causing irreparable harm, for which there is no adequate remedy at law, unless enjoined by this Court.

PRAYER FOR RELIEF

16. Wherefore, Motiva respectfully requests that this Court enter judgment against Nintendo America and Nintendo Japan as follows:

a. For judgment that Defendants have infringed and continue to infringe the ‘151 patent;

b. For judgment that the acts of infringement, contributory infringement, and inducing infringement have been and are willful;

c. For preliminary and permanent injunctions under 35 U.S.C. § 283 against Defendants, their respective directors, officers, employees, agents, subsidiaries, parents, attorneys and all persons acting in concert, on behalf of, in joint venture, or in partnership with Defendants enjoining any further acts of infringement;

d. For an accounting of all damages caused to Motiva by Defendants' acts of infringement;

d. For damages to be paid by Defendants adequate to compensate Motiva for Defendants' infringement, including interest, costs and disbursement as justified under 35 U.S.C. § 284;

e. For judgment finding this to be an exceptional case, and awarding Motiva attorney fees under 35 U.S.C. § 285; and

f. For such relief at law and in equity as the Court may deem just and proper.

DEMAND FOR A JURY TRIAL

Motiva demands a trial by jury of all issues triable by a jury.

Dated: November 10, 2008

Respectfully submitted,

/s/ Christopher D. Banys (by Wesley Hill)

Christopher D. Banys - ***Lead Attorney***
State Bar No. 230038 (California)
Daniel W. Bedell
State Bar No. 254912 (California)
LANIER LAW FIRM, P.C.
530 Lytton Avenue
Palo Alto, CA 94301
Tel: (650) 322-9100
Fax: (650) 322-9103
cdb@lanierlawfirm.com
dwb@lanierlawfirm.com

W. Mark Lanier
State Bar No. 11934600
Dara G. Hegar
State Bar No. 24007280
LANIER LAW FIRM, P.C.
6810 FM 1960 West
Houston, Texas 77069
Tel: (713) 659-5200
Fax: (713) 659-2204
wml@lanierlawfirm.com
dgh@lanierlawfirm.com

Wesley Hill
State Bar No. 24032294
IRELAND, CARROLL & KELLEY, P.C.
6101 South Broadway, Suite 500
Tyler, TX 75703
Tel: (903) 561-1600
Fax: (903) 581-1071
fedserv@icklaw.com

ATTORNEYS FOR PLAINTIFF